

FILED
JAN 08 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LARRY DEAN PADILLA,

Plaintiff,

v.

M.S. EVANS, et al.

Defendants.

No. C 06-1725 MJJ (PR)

**ORDER DENYING MOTION FOR
STAY OR RECONSIDERATION**

(Docket No. 95)

Plaintiff, an inmate at Salinas Valley State Prison ("SVSP"), filed this pro se civil rights complaint pursuant to 42 U.S.C. § 1983. After reviewing the complaint, the Court found that it stated a cognizable Eighth Amendment claim for the deprivation of outdoor exercise. On November 26, 2007, defendants' motion to dismiss the complaint as unexhausted was granted in part and denied in part. Plaintiff has recently filed a motion for a stay pursuant to Rule 62(h) of the Federal Rules of Civil Procedure ("FRCP") and a motion for reconsideration pursuant to FRCP 60(b).

Rule 62(h) provides for a stay "when a court has ordered a final judgment" as to multiple claims or multiple parties. No final judgment has been ordered in this case on any of the claims, including on the claims found to have been unexhausted. Final judgment will be entered upon resolution of the remaining claims against the remaining parties. Consequently there is no basis for granting a stay pursuant to FRCP 62(h).

Rule 60(b) provides for relief only upon a showing of: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse

1 party; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other
2 reason justifying relief. See Fed. R. Civ. P. 60(b); School Dist. No. 1J, 5 F.3d at
3 1263. Motions for reconsideration should not be frequently made or freely granted; they
4 are not a substitute for appeal or a means of attacking some perceived error of the court.
5 See Twentieth Century - Fox Film Corp. v. Dunnahoo, 637 F.2d 1338, 1341 (9th Cir.
6 1981). Subparagraph (6) requires a showing that the grounds justifying relief are
7 extraordinary; mere dissatisfaction with the court's order or belief that the court is
8 wrong in its decision are not adequate grounds for relief. Id.


9 Here, plaintiff does not make a showing of mistake, inadvertence, surprise or
10 excusable neglect. He does not set forth any newly discovered evidence, fraud, or any
11 grounds for finding that the judgment is void or has been satisfied. Nor does he set
12 forth any other reason justifying relief. Rather, plaintiff argues that the Court was
13 wrong in its ruling. He asserts that he should be excused from exhausting his claims
14 because he has had prior administrative grievances denied as "duplicative." Plaintiff
15 cites no authority, and the Court is aware of none, holding that exhaustion either of
16 administrative appeals to higher levels of review, or of grievances of subsequent actions
17 by prison officials, is excused on the grounds that the inmate has in the past had a
18 grievance denied as duplicative. The Court notes that exhaustion is mandatory and
19 futility or other exceptions should not be read into the exhaustion requirement. See
20 Booth v. Churner, 532 U.S. 731 (2001).

21 Accordingly, plaintiff's motion for a stay or for reconsideration is DENIED.

22 This order terminates Docket No. 95.

23 IT IS SO ORDERED.

24 DATED: 1/8/2008

25 
26 MARTIN J. JENKINS
27 United States District Judge
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LARRY D. PADILLA,
Plaintiff,

Case Number: CV06-01725 MJJ

CERTIFICATE OF SERVICE

v.


M.S. EVANS et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 9, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Larry Dean Padilla
Prisoner Id P-05966
P.O. Box 1050
Soledad, CA 93960-1050

Dated: January 9, 2008


Richard W. Wieking, Clerk
By: Monica Tutson, Deputy Clerk